

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:LM:FSH:MAN:2:TL-N-6031-00
VATaverna

date:

to: Territory Manager, Technology, Communication and Media
Attn: Revenue Agent William Wise

from: Area Counsel (Financial Services & Healthcare) (Area 1 - Manhattan, NY)

subject:

Form 872 - Tax Year [REDACTED]

Consent to Extend the Statute of Limitations on Assessment

UIL Nos. 6501.08-00, 6501.08-09, 6501.08-17

DISCLOSURE STATEMENT

THIS DOCUMENT INCLUDES CONFIDENTIAL INFORMATION SUBJECT TO THE ATTORNEY-CLIENT AND DELIBERATIVE PROCESS PRIVILEGES, AND MAY ALSO HAVE BEEN PREPARED IN ANTICIPATION OF LITIGATION. THIS DOCUMENT SHOULD NOT BE DISCLOSED TO ANYONE OUTSIDE THE INTERNAL REVENUE SERVICE, AND ITS USE WITHIN THE INTERNAL REVENUE SERVICE SHOULD BE LIMITED TO THOSE WITH A NEED TO REVIEW THE DOCUMENT IN RELATION TO THE SUBJECT MATTER OF THE CASE DISCUSSED HEREIN. ONLY OFFICE PERSONNEL WORKING THE SPECIFIC CASE OR SUBJECT MATTER MAY USE THIS DOCUMENT. THIS DOCUMENT IS ALSO TAX INFORMATION OF THE INSTANT TAXPAYER WHICH IS SUBJECT TO I.R.C. § 6103. THIS DOCUMENT SHOULD NOT BE DISCLOSED TO THE TAXPAYER OR ITS REPRESENTATIVE(S) UNDER ANY CIRCUMSTANCES.

We write in response to your request for advice in the above-captioned matter. Specifically you have requested that we provide you with the appropriate language to use on Form 872 (Consent to Extend the Time to Assess Tax) to extend the statute of limitations on assessment of tax of [REDACTED] for the taxable year [REDACTED].

The advice given below is subject to post review by the Chief Counsel's national office. Therefore, we ask that you wait ten working days from the date of this memorandum, or until you earlier hear of approval, before acting on this advice.

Issues

1. Which entity is the proper entity to execute Forms 872 for Information and its subsidiaries, for the pre-merger tax years?
2. What specific language should be used on the Forms 872?

Facts

For the taxable years ending [REDACTED] and [REDACTED] ("pre-merger tax years"), [REDACTED] ("[REDACTED]") (EIN [REDACTED]), a Delaware corporation, was the common parent of an affiliated group of corporations and filed consolidated U.S. Corporate Income Tax Returns (Forms 1120) with its affiliates. You are presently conducting an examination of Information and its subsidiaries for the pre-merger tax years.

[REDACTED] ("[REDACTED]") is a Delaware corporation. [REDACTED] is wholly-owned by [REDACTED] ("[REDACTED]"), a Delaware corporation. On [REDACTED], [REDACTED], [REDACTED], and [REDACTED] entered into an Agreement and Plan of Merger ("Agreement").

As a result of the Agreement, [REDACTED] became the wholly-owned subsidiary of [REDACTED]. In addition, [REDACTED], which was created solely for the purpose of acquiring [REDACTED], was merged out of existence.

On [REDACTED], [REDACTED] filed a Certificate of Ownership and Merger with the Office of the Secretary of State for the State of Delaware, merging [REDACTED] and [REDACTED] into [REDACTED] under the name "[REDACTED]."

Discussion

As a preliminary matter, we recommend that you pay strict attention to the rules set forth in the IRM. Specifically, IRM 4541.1(2) requires use of Letter 907(DO) to solicit the extension, and IRM 4541.1(8) requires use of Letter 929(DO) to return the signed extension to the taxpayer. Dated copies of both letters should be retained in the case file as directed. When the signed extension is received from the taxpayer, the responsible manager should promptly sign and date it in accordance with Treas. Reg. § 301.6501(c)-1(d) and IRM 4541.5(2). The manager must also update the statute of limitations in the continuous case management statute control file and properly annotate Form 895 or equivalent. See IRM 4531.2 and 4534. This includes Form 5348. In the event an extension becomes separated

from the file or lost, these other documents would become invaluable to establish the agreement.

Furthermore, Section 3461 of the Restructuring and Reform Act of 1998, codified in I.R.C. § 6501(c)(4)(B), requires the Service to advise taxpayers of their right to refuse to extend the statute of limitations on assessment, or in the alternative to limit an extension to particular issues or for specific periods of time, each time that the Service requests that the taxpayer extend the limitations period. To satisfy this requirement, you may provide Publication 1035, "Extending the Tax Assessment Period," to the taxpayer when you solicit the Form SS-10. Alternatively, you may advise the taxpayer orally or in some other written form of the I.R.C. § 6501(c)(4)(B) requirement.

Regardless of which method you use to notify the taxpayer, you should document your actions in this regard in the case file. Although section 6501(c)(4)(B) does not provide a sanction or penalty on the Service for failure to comply with the notification requirement, a court might conclude that an extension of the statute of limitations is invalid if the Service did not properly notify the taxpayer. Thus, it is important to document your actions in this regard in the case file.

1. Which entity is the proper entity to execute Forms 872 for [REDACTED] and its subsidiaries, for the pre-merger tax years?

In general, the statute of limitations on assessment expires three years from the date the tax return for such tax is filed. I.R.C. § 6501(a). Section 6501(c)(4), however, provides an exception to the general three year statute of limitations on assessment. This exception provides that the Secretary and the taxpayer may consent in writing to an agreement to extend the statute of limitations. The Service uses the Form 872 to memorialize such consent.

In the case of a consolidated group, guidance as to the appropriate entity to enter into a consent to extend the statute of limitations on assessment for income tax can be found in the consolidated return regulations. Treas. Regs. §1.1502-1 et seq. Pursuant to the consolidated return regulations, the common parent is the sole agent for each member of the group, duly authorized to act in its own name in all matters relating to the income tax liability for the consolidated return year. Treas. Reg. §1.1502-77(a). The common parent in its name will give waivers, and any waiver so given, shall be considered as having been given or executed by each such subsidiary. Treas. Reg. §1.1502-77(a). Unless there is an agreement to the contrary, an

agreement entered into by the common parent extending the time within which an assessment of tax may be made for the consolidated return year shall be applicable to each corporation which was a member of the group during any part of such taxable year. Treas. Reg. §1.1502-77(c).

The common parent remains the agent for the members of the group for any year during which it was the common parent, whether or not consolidated returns are filed in subsequent years and whether or not one or more subsidiaries have become or have ceased to be members of the group. See Treas. Reg. §1.1502-77(a); Southern Pacific v. Commissioner, 84 T.C. 395, 401 (1985). Accordingly, as a general rule, the common parent remains the proper party to extend the statute of limitations for income tax for any taxable year for which it was the common parent, as long as it remains in existence.

In the instant case, the Agreement provides that Information survived the merger between [REDACTED] and [REDACTED]. Therefore, [REDACTED], (now [REDACTED]) is the proper party to execute the Form 872 relating to [REDACTED]'s [REDACTED] employment tax liabilities.

The Forms 872 should be executed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to act on behalf of [REDACTED], [REDACTED] and [REDACTED], respectively. See Rev. Rul. 83-41, 1983-1 C.B. 349, clarified and amplified, Rev. Rul. 84-165, 1984-2 C.B. 305.

2. What specific language should be used on the Forms 872?

The caption of the Forms 872 extending the statute of limitations for Information and its subsidiaries for the pre-merger tax years should read as follows:

"[REDACTED] (EIN [REDACTED]) (formerly [REDACTED])"

The EIN of [REDACTED] (EIN [REDACTED]) should be entered in the upper right hand corner of the Form SS-10.

Should you have any questions regarding this matter, please contact Viviana Taverna of this office at (212) 264-1595, ext. 211.

ROLAND BARRAL
Area Counsel (Financial Services
& Healthcare:Manhattan)

By:

MARIA T. STABILE
Associate Area Counsel (LMSB)